SUBJECT INDEX

Page

Preliminary Statement of the Case 1

I

Respondents Do Not Dispute That California Taxpayers Are Denied Equal Protection or Deprived of Any Viable Remedy 4

II

There Exists No Adequate Nonfederal Basis Upon Which to Deny This Petition for Writ of Certiorari 5

III

Under the Opinion Below, Petitioners Are Denied Any Opportunity of Showing the Discriminatory Assessment Which Constitutes a Denial of Equal Protection of the Laws 7

IV

The Doctrine Stated in Roller v. Holly Is Not in Issue in This Petition 8

V

Petitioners Were Denied Any Opportunity to Litigate the Issue of Discriminatory Assessment 8

Conclusion 9

TABLE OF AUTHORITIES CITED

Cases	Page
Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673	6
Sioux City Bridge Co. v. Dakota County, 260 U.S. 441	3, 4, 8

Miscellaneous	
Wall Street Journal, Friday, May 9, 1975	5

Statutes	
California Revenue and Taxation Code, Sec. 408	3, 4
California Revenue and Taxation Code, Sec. 451	3, 4
California Revenue and Taxation Code, Sec. 1603	3
California Revenue and Taxation Code, Sec. 1605 (b)	3
California Revenue and Taxation Code, Sec. 1605 (c)	3
California Revenue and Taxation Code, Sec. 1605.1	4
California Revenue and Taxation Code, Sec. 1610. 8(b)	3
California Revenue and Taxation Code, Sec. 1610. 8(c)	3
United States Constitution, Fourteenth Amendment	8

IN THE

Supreme Court of the United States

October Term, 1974
No. 74-1207

AMERICAN CHEMICAL CORP., ATLANTIC RICHFIELD CORP., ITT GENERAL CONTROLS, INC., McDONNELL DOUGLAS CORP., SHELL OIL CO., WESTINGHOUSE ELECTRIC CORP., and WITCO,

Petitioners,

vs.

THE COUNTY OF LOS ANGELES, *et al.*,

Respondents.

Reply to Response to Petition for Writ of Certiorari.

Preliminary Statement of the Case.

Respondents have combined their response to the Petition herein with their motions in respect to a separate Appeal. This makes the Respondents' arguments somewhat difficult to follow since most of them pertain only to the cases on appeal.

The 16 cases included in the Appeal are basically different from those consolidated in this Petition. There was no administrative proceeding; Appellant's actions were dismissed at the pleading stage. There was no trial, no evidence, no findings. The constitutional issues presented in the Appeal relate to adequacy and timeliness of notice and whether relief may be conditioned upon pursuit of a wholly inadequate remedy.

Our attention will only be directed towards those portions of the Response dealing with the eight cases included in the Petition for Writ of Certiorari.

We do not agree with Respondents' statement of facts on pages 3 and 4 of their Response and refer the Court to Petitioners' statement of the case.[1] We particularly call attention to Respondents' assertion that "no evidence was offered" to dispute the assessor's testimony regarding the average rate of assessment applied to all taxable property in the county. Petitioners without exception offered as evidence at the Board hearings the official determinations made by the State Board of the average rate of assessment being applied in the county. This evidence was excluded in all cases.

The County is in no position to dispute that the official State Board determinations were the best evidence available. The Board itself, after the hearings, adopted the State Board ratio as the official ratio for the county. The Assistant County Counsel subsequently testified that there was no way the County could dispute the findings of the State Board.

As to findings, there was no procedure for findings or an opinion at the Board level. None was ever made in the thousands of cases handled by the Board. The reviewing courts refused to make any finding on the ultimate issues of fact, *i.e.* the average rate of assessment on all taxable property and the rate applied to Petitioners' properties.

Also, the trial courts refused to consider or admit any evidence on the merits.

More importantly, Respondents fail to address themselves to the effect of the California Appellate Court

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[1]Petition 5-10.

decision on the purported remedy provided by California Revenue and Taxation Code §1603. The Appellate Court holds that the State Board's determination of countywide ratio (or any other ratio determination) is inadmissible without a showing that it was "computed on the same aggregate fair market value of all taxable property in the county as was used by the assessor."[2]

Given the operation of the secrecy statutes, the decision itself destroys any remedy since it is impossible to determine or prove the aggregate market valuation used by the assessor on all the other properties in the county without access to that unique information. Respondents do not disagree with this analysis nor do they dispute the effect of the secrecy statutes.[3] Respondents, however, are correct in noting a meaningless exception to the secrecy statutes permitting taxpayer access to market value data on his *own* property.[4]

Neither do Respondents dispute that the opinion below destroyed current remedies of all taxpayers under Revenue and Taxation Code Section 1605(b) and (c).[5]

Although Respondents referred to findings by the trial court they do not question the finding by the Appellate Court[6] that the County Board was applying an illegal standard in contravention of the right to equal protection of the laws enunciated by this Court in *Sioux City Bridge Co. v. Dakota County*.[7]

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[2]Petition C 3-4.

[3]Calif. Rev. & Tax. Code §§408 and 451; Petition 4-5.

[4]However, this is immaterial where the burden is proving the market valuations used by the assessor in assessing the millions of other properties in the county.

[5]This section was recently renumbered by the Legislature as Calif. Rev. & Tax. Code §1610.8(b) and (c).

[6]Petition D-2.

[7]260 U.S. 441.

I

Respondents Do Not Dispute That California Taxpayers Are Denied Equal Protection or Deprived of Any Viable Remedy.

Petitioners set forth the specific portion of the opinion below conditioning relief upon showing "the same aggregate fair market value of all taxable property in the county as was used by the assessor."[8] Also, Petitioners set forth the secrecy statutes, Revenue and Taxation Code Sections 408 and 451.[9]

Respondents neither question the holding of the Appellate Court nor the effect of the secrecy statutes.[10]

Respondents speak of "overvaluation" of property,[11] even though there has never been a question of overvaluation in these cases. The market valuation of Petitioners' properties was conceded and the only contention is that Petitioners' properties were assessed at a higher fraction of market value than other properties in the county, which this Court has held to be a denial of equal protection.[12]

Neither do Respondents question or dispute that millions of present and future taxpayers in California are left without a viable remedy.[13]

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[8]Petition 11.

[9]Petition 4-5. Under these statutes taxpayers are prohibited from obtaining or determining the "aggregate market value as used by the assessor."

[10]Nor could they question the effect of the secrecy statutes since Calif. Rev. & Tax. Code §1605.1, which is part of the Assessment Review Procedure Sections, provides: "Nothing in §1605 of the Code shall be construed as permitting any violation of §408 or §451 of this Code."

[11]Response 3, 6, and A-3.

[12]*Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441.

[13]Petition 23-25.

Respondents are correct that Assessor Watson, although indicted, was acquitted. Assessor Watson was successful in justifying the failure to make deficiency assessments of several hundred million dollars against hundreds of taxpayers who had under-reported only because those who had reported correctly had actually been overassessed because of the discriminatory assessment ratio that had been applied by Watson's predecessor.

Since filing this Petition new indictments of California assessors have received national publicity. One of the more succinct news releases appeared in the Wall Street Journal of Friday, May 9, 1975:

> "A Republican Congressman from California. Andrew Henshaw, was indicted by a County Grand Jury on charges of bribery, embezzlement and misappropriation of funds during a term as Orange County Assessor. His successor in that post was also indicted."

Unquestionably, California will continue its reputation of having the most corrupt assessment officials in the country until taxpayers are afforded a viable remedy.

II

There Exists No Adequate Nonfederal Basis Upon Which to Deny This Petition for Writ of Certiorari.

Respondents, in their response to Petition for Writ of Certiorari, argue that the Writ of Certiorari should not issue because the judgment of the court below rests on an adequate nonfederal basis. Yet Respondents fail to state what this allegedly adequate basis is, other than to note that Petitioners attempted to pursue their purportedly adequate administrative remedies and lost.

Any implication that Petitioners failed to avail themselves of all administrative or other opportunities for

presenting their case is not correct. At all possible stages they attempted to prove the discriminatory assessments. However, all evidence of the discriminatory assessments was excluded by the Board, by the Court and affirmed in the opinion below.

Petitioners base their Petition for Writ of Certiorari on the fact that, in the instant cases, the opinion below left Petitioners without any effective remedy for the redress of the discriminatory assessment which they have suffered.

Other than the case of *Brinkerhoff-Faris Co. v. Hill*,[14] the citations by Respondents have no relevancy to any of the issues presented. In *Brinkerhoff*, this Court granted relief to a taxpayer who was barred from pursuing his claim of discriminatory assessment by an after-the-fact state Court decision which stated that the taxpayer had open to it remedies previously held to be unavailing. In the instant cases, similar relief is being sought from an after-the-fact decision which retroactively imposes on Petitioners an impossible and unconscionable burden of proof in the administrative hearing, a burden which at the time of the hearing Petitioners did not know they had. This impossible burden consists of being required to prove the applicable countywide assessment ratio using the *identical* aggregate market value used by the county assessor even though the data on which the assessor calculated his value was kept secret by statute.

Petitioners respectfully submit that both *Brinkerhoff* and the instant cases present constitutional issues of due process which are not insulated from this Court's review by an unspecified adequate nonfederal basis.

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[14] 281 U.S. 673.

III

Under the Opinion Below, Petitioners Are Denied Any Opportunity of Showing the Discriminatory Assessment Which Constitutes a Denial of Equal Protection of the Laws.

Respondents, in arguing that Petitioners have not shown such a discriminatory assessment as to constitute a denial of equal protection, depart completely from the opinion below and the issues presented by Petitioners. The opinion below in effect holds that no determination of countywide ratio is relevant unless based on "aggregate market value as used by the assessor."[15] The secrecy statutes deny taxpayer access to market value data of any property other than taxpayers' own. Thus, a taxpayer, being unable to prove the aggregate market value as used by the assessor, is denied any remedy.

Furthermore, most of the statements in Respondents' Point IV are erroneous and misleading. For example, "a full hearing" was not, as asserted, had before either the Board or the Superior Court trial judges. The trial judges refused to consider *any* evidence on the merits. This refusal was in spite of both trial courts having before them the sworn testimony of the major assessment officials of the county that when they applied a 50% rate of assessement on Petitioners' property, they knew the average rate of assessment for the county was 25%! The Chairman of the County Board of Supervisors also sat on the County Board of Equalization and testified that it was the Board's understanding that they did not have to apply rates of assessment uniformly but were free to apply rates from zero to 50%.

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[15]Petition A-9.

Thus, it is not surprising that in the opinion below, the Appellate Court[16] found that the Board failed to follow the standard of equalization dictated by the Fourteenth Amendment and this Court.[17]

IV

The Doctrine Stated in Roller v. Holly Is Not in Issue in This Petition.

Respondents note that Petitioners did not raise the *Roller* case, or the argument that preparation time was insufficient, in their Petition for Writ of Certiorari. Respondents are correct. This was a principal argument of Petitioners in the proceedings below and remains such in the Appeal filed contemporaneously herewith. However, under the appellate decision presented here for review, preparation time becomes irrelevant. Because of the secrecy statutes, a taxpayer is prohibited and forever barred from obtaining the market data used by the assessor which is necessary to comply with the condition imposed by the Appellate Court that any proof of the countywide ratio must be based on the aggregate market value used by the assessor.

V

Petitioners Were Denied Any Opportunity to Litigate the Issue of Discriminatory Assessment.

Petitioners certainly agree with the statement in Respondents' Point VIII that Petitioners did not prove their case at the Board hearing. Under the opinion below, there is no way in which Petitioners could have made such proof unless the Court expects them to ob-

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[16]Petition D-2.

[17]*Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441.

tain the market data from the assessor illegally. Again, Respondents' arguments are irrelevant and nonresponsive both to the opinion below and to the argument that the judicial review afforded Petitioners failed to comply with minimum standards of due process.

Conclusion.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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